

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Ignatzio Giuliano,)	
)	C/A No. 6:10-2485-MBS
Petitioner,)	
)	
vs.)	
)	ORDER
Warden, FCI Williamsburg,)	
)	
Respondent.)	
_____)	

Petitioner Ignatzio Giuliano is an inmate in custody of the Federal Bureau of Prisons who currently is incarcerated at FCI Williamsburg in Salters, South Carolina. On September 24, 2010, Petitioner, proceeding pro se and in forma pauperis, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, alleging that under recent Supreme Court authority he is now “actually innocent” of being a career offender.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Kevin F. McDonald for pretrial handling. The Magistrate Judge reviewed the petition pursuant to the provisions of 28 U.S.C. § 1915(e)(2)(B)(i) and (ii). On October 12, 2010, the Magistrate Judge issued a Report and Recommendation in which he determined that Petitioner had failed to provide any factual information to demonstrate that the conduct for which he had been convicted has been deemed non-criminal. See 28 U.S.C. § 2255(e); In re Jones, 226 F.3d 328 (4th Cir. 2000). Accordingly, the Magistrate Judge recommended that the petition be summarily dismissed without prejudice and without requiring Respondent to file a return. Petitioner filed no objections to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court.

Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

The court has carefully reviewed the record and concurs in the recommendation of the Magistrate Judge. The court adopts the Report and Recommendation and incorporates it herein by reference. The within petition is dismissed *without prejudice* and without requiring Respondent to file a return.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina

November 8, 2010.

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.